

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ANTOINETTE MARQUEZ,

Plaintiff,

v.

No. 1:24-cv-00423-KG-JMR

AMBER BAKER-CHAVEZ, *et al.*,

Defendants.

ORDER DENYING MOTION TO DISMISS WITHOUT PREJUDICE

Pro se Plaintiff filed her Fifth Amended Complaint on January 31, 2025, pursuant to Court Order. *See* Doc. 110; Order, Doc. 107, filed January 13, 2025. Defendants Stephen Matthew Torres, Teresa Hanlon and Trujillo Dodd, Torres & O’Brien, LLC, d/b/a Family Law Firm, LLC, move for dismissal of Plaintiff’s claims against them because “[s]ervice of process was never properly executed by the Plaintiff on these Defendants.” Defendants Stephen Matthew Torres, Teresa Hanlon and Trujillo Dodd, Torres & O’Brien, LLC, d/b/a Family Law Firm, LLC’s Joint Third Motion to Dismiss, Doc. 119, filed February 28, 2025.

Plaintiff is proceeding *in forma pauperis* pursuant to 28 U.S.C. § 1915. *See* Order, Doc. 9, filed June 17, 2024. Section 1915 provides that the “officers of the court shall issue and serve all process, and perform all duties in [proceedings *in forma pauperis*]”). 28 U.S.C. § 1915(d); *see also* Fed. R. Civ. P. 4(c)(3) (the Court must order that service be made by a United States marshal or deputy marshal or by a person specially appointed by the Court “if the plaintiff is authorized to proceed in forma pauperis under 28 U.S.C. § 1915”). The Court did not previously order service because Plaintiff’s original, Amended, Second, Third and Fourth Amended Complaints contained deficiencies. Plaintiff has now filed her Fifth Amended Complaint and United States Magistrate

Judge Jennifer M. Rozzoni has ordered the Clerk to request that Defendants Stephen Matthew Torres, Teresa Hanlon and Trujillo Dodd, Torres & O'Brien, LLC, d/b/a Family Law Firm, LLC, waive service pursuant to Rule 4(d) of the Federal Rules of Civil Procedure. *See* Order, Doc. 132, filed April 4, 2025; Fed. R. Civ. P. 4(d)(3) ("A defendant who, before being served with process, timely returns a waiver need not serve an answer to the complaint until 60 days after the request was sent").

The Court denies Defendants Stephen Matthew Torres, Teresa Hanlon and Trujillo Dodd, Torres & O'Brien, LLC's Motion to Dismiss for improper service because the Court has now begun the service procedure for those Defendants. Defendants Stephen Matthew Torres, Teresa Hanlon and Trujillo Dodd, Torres & O'Brien, LLC may file a motion to dismiss at the appropriate time after either waiving service or being served by the Court.

IT IS ORDERED that Defendants Stephen Matthew Torres, Teresa Hanlon and Trujillo Dodd, Torres & O'Brien, LLC, d/b/a Family Law Firm, LLC's Joint Third Motion to Dismiss, Doc. 119, filed February 28, 2025, is **DENIED without prejudice**.

/s/ KENNETH J. GONZALES¹
CHIEF UNITED STATES DISTRICT JUDGE

¹ Please note that this document has been electronically filed. To verify its authenticity, please refer to the Digital File Stamp on the NEF (Notice of Electronic Filing) accompanying this document. Electronically filed documents can be found on the court's PACER public access system.